

## **REMARKS**

Claims 60-72 have been added to the application. Claims 1-59 have been canceled. Consideration and allowance of claims 60-72 is respectfully requested.

### **Objection to the Specification**

The Office action objected to the specification for lacking complete identification of the parent application to which this application claims priority. The specification has been amended to reflect that the parent application has now issued as US patent no. 6,258,043. The objection should be withdrawn.

### **Objection to the Drawings**

The Office action also objected to the drawings. Particularly, it is indicated in the Office action that reference character "30" has been used to designate both a ring and different diameters in Figs. 2 and 3. As the reference character "30" is not discussed in the specification in connection with any of Figs. 1-3 in which it appears apparently to refer to the passage 22, it has been deleted from the figures. Likewise, reference character "32" is not discussed in the specification in connection with any of Figs. 1-3 in which it appears to refer to a diameter of the body portion 20, it has been deleted from the figures. The objection should be withdrawn.

### **Claim Objections**

The Office action objected to claim 32. As claim 32 has been canceled, the objection is moot and should be withdrawn.

### **Rejection Under 102(e) - Rosenbaum et al.**

The Office action rejected claims 32-39 and 59 as being anticipated by Rosenbaum et al. under 35 U.S.C. § 102(e). Claims 32-39 and 59 have been canceled, rendering the rejection moot. Notwithstanding, the applicants submit Rosenbaum et al. is not prior art to the instant application. The applicants submit herewith a declaration under 37 C.F.R. § 1.131 establishing that the invention was made in the United States before the January 13, 1998

filing date of Rosenbaum et al. Moreover, the applicants submit that Rosenbaum et al., even if considered to be prior art, which the applicants submit it is not, does not anticipate newly presented claims 60-72. Rosenbaum et al. at least does not teach or suggest an ear probe tip wherein when the ear probe tip is placed on the probe end an inner surface is disposed about the end, is substantially in contact with the end along the length to be covered and the second opening is proximate to the output end. Nor does Rosenbaum et al. teach or suggest a plurality of annular flanges extending from an outer surface of the body portion. For all of these reasons, the applicants submit claims 60-72 are patentable over Rosenbaum et al.

#### **Rejection Under 102(b) - Gunterman**

The Office action rejected claims 40-42 and 44-48 as being anticipated by Gunterman under 35 U.S.C. § 102(b). Claims 40-42 and 44-48 have been canceled, rendering the rejection moot. Notwithstanding, the applicants submit that Gunterman does not anticipate newly presented claims 60-72. Gunterman at least does not teach or suggest an ear probe tip wherein when the ear probe tip is placed on the probe end an inner surface is disposed about the end, is substantially in contact with the end along the length to be covered and the second opening is proximate to the output end. In the only depiction of the tip shown in Gunterman that reveals the configuration of the passage within which the probe end is received, it does not extend such that the output end of the probe is proximate the end of the ear probe tip, nor does it teach the passage being in contact with the probe end along substantially the entire length of the probe end to be covered by the ear probe tip.

The applicants have previously argued, and have provided the declaration of Gabriel Raviv (attached with the applicants February 14, 2003 amendment), where a difference between an ear probe tip in accordance with one or more embodiments of the invention and the prior art is the proximity of the output end of the probe to the end of the ear probe tip. The passage of the ear probe tip should not form a significant portion of the acoustic path from the probe output end. Raviv Declaration ¶ 12. A small portion may extend beyond the

end. In the only teaching in Gunterman regarding the relationship of the ear probe tip to the input end of the stethoscope (Fig. 3), the Gunterman tip forms a chamber around the input end of the stethoscope. This chamber would be detrimental to consistency and unusable with current probes for hearing testing. Additionally, the Gunterman tip contacts the end of the stethoscope only at one isolated location, not substantially along the length to be covered. Having the passage contact the end substantially along the length to be covered ensures a snug fit to the end as well as eliminates potential acoustic cavities that might detrimentally affect testing.

For all of these reasons, the applicants submit claims 60-72 are patentable over Gunterman.

#### **Rejection Under 102(b) - Huntress**

The Office action rejected claims 40-42 and 44-48 as being anticipated by Huntress under 35 U.S.C. § 102(b). Claims 40-42 and 44-48 have been canceled, rendering the rejection moot. Notwithstanding, the applicants submit that Huntress does not anticipate newly presented claims 60-72. Huntress at least does not teach or suggest an ear probe tip wherein when the ear probe tip is placed on the probe end an inner surface is disposed about the end, is substantially in contact with the end along the length to be covered and the second opening is proximate to the output end. Huntress teaches a passage with a relieved portion into which the input end of a stethoscope is inserted. A portion 3 of the passage forms a portion of the acoustic path from the stethoscope end into the ear canal. As already discussed, such an arrangement wherein the ear probe tip forms a substantial portion of the acoustic path, while perhaps sufficient for stethoscopes where sound is only communicated into the ear canal, is not suitable for hearing testing. In addition, Huntress fails to teach or suggest a plurality of annular flanges, which permits a single sized ear probe tip to fit into a variety of sizes of ear canals.

For all of these reasons, the applicants submit claims 60-72 are patentable over Huntress.

#### **Rejection Under 102(b) - Shore et al**

The Office action rejected claims 40-42 and 44-48 as being anticipated by Shore et al under 35 U.S.C. § 102(b). Claims 40-42 and 44-48 have been canceled, rendering the rejection moot. Notwithstanding, the applicants submit that Shore et al do not anticipate newly presented claims 60-72. Shore et al at least do not teach or suggest an ear probe tip wherein when the ear probe tip is placed on the probe end an inner surface is disposed about the end, is substantially in contact with the end along the length to be covered and the second opening is proximate to the output end. Shore et al teach a passage with a relieved portion into which the output end of an acoustic headset is inserted. A portion of the passage forms a portion of the acoustic path from the output end into the ear canal. As already discussed, such an arrangement wherein the ear probe tip forms a substantial portion of the acoustic path, while perhaps sufficient for acoustic headsets where sound is only communicated into the ear canal, is not suitable for hearing testing. In addition, Shore et al fail to teach or suggest a plurality of annular flanges, which permits a single sized ear probe tip to fit into a variety of sizes of ear canals.

For all of these reasons, the applicants submit claims 60-72 are patentable over Shore et al.

#### **Rejection Under 102(b) - Håkansson**

The Office action rejected claims 59 as being anticipated by Håkansson under 35 U.S.C. § 102(e). Claim 59 has been canceled, rendering the rejection moot. Notwithstanding, the applicants submit that Håkansson does not anticipate newly presented claims 60-72. Håkansson teaches an ear plug, hardly suitable as a tip for a probe wherein sound must be communicated from the probe into the ear canal, and potentially, return sound received for analysis. Clearly, Håkansson does not teach or suggest an ear probe tip wherein

when the ear probe tip is placed on the probe end an inner surface is disposed about the end, is substantially in contact with the end along the length to be covered and the second opening is proximate to the output end. Håkansson teaches no second opening for the sound output.

For all of these reasons, the applicants submit claims 60-72 are patentable over S Håkansson.

### **Rejection Under 103(a) - Mullin et al in view of Baum**

The Office action rejected claims 32-42, 44-52 and 54-59 as being unpatentable, i.e., obvious, over Mullin et al in view of Baum. Claims 32-42, 44-52 and 54-59 have been canceled, rendering the rejection moot. Notwithstanding, the applicants submit that the cited combination does render unpatentable newly presented claims 60-72.

Neither Mullin et al. nor Baum teach a ear probe tip wherein when the ear probe tip is placed on the probe end an inner surface is disposed about the end, is substantially in contact with the end along the length to be covered and the second opening is proximate to the output end. Each of Mullin et al and Baum teach a passage with a relieved portion into which the output end of a probe or earphone is inserted. A portion of the passage forms a portion of the acoustic path from the output end into the ear canal. As already discussed, such an arrangement is not suitable for hearing testing. As both Mullin et al and Baum teach the ear probe tip passage forming a part of the acoustic path, and neither teach or suggest contrary arrangements, the combination fail to teach or suggest the invention set forth in claims 60-72.

For at least these reasons, claims 60-72 are allowable over the combination of Mullin et al in view of Baum.

### **Double Patenting Rejection**

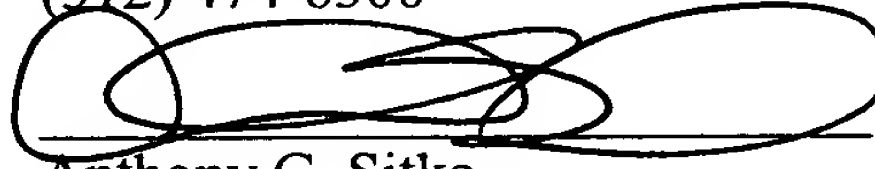
The Office action rejected claims 32, 40, 49 and 59 under the judicially created doctrine of obviousness-type double patenting. While these claims have been canceled, and hence the rejection rendered moot, to avoid a similar rejection against new claims 60-72, a Terminal Disclaimer is enclosed with this response. The rejection should be withdrawn.

The commissioner is authorized to charge any payment required in connection with the filing of this paper or to credit any overpayment to Deposit Account 13-2855. A duplicate copy of this paper is enclosed.

Respectfully submitted,

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By:

A handwritten signature in black ink, appearing to read 'Anthony G. Sitko', is written over a horizontal line.

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**April 22, 2004**